

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARLENE COOK, et al.,

Plaintiffs,

-against-

ORDER
15 CV 6559 (ILG) (CLP)

CITY OF NEW YORK, et al.,

Defendants.

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POLLAK, United States Magistrate Judge:

On October 10, 2018, the Court held a Status Conference in this case and made a series of rulings regarding plaintiffs' Motion to Compel Discovery. (See 10/10/18 Order).¹ The Court Ordered defendants to inform the Court by October 24, 2018 if the ACS case file had been located and if not located, to seek a subpoena to be So Ordered by the Court to compel production from the non-party who defendants alleged to be in possession of the file. (Id.)

On October 24, 2018, defendants informed the Court that the ACS case file had not been located and requested an extension until November 2, 2018 to seek a subpoena from the Court. (Defs.' 10/24/18 Ltr.).² On October 29, 2018, the Court granted defendants' request. (10/29/18 Order).³ On November 2, 2018, defendants informed the Court that they had located "part of the relevant ACS case file," and therefore requested that the Court "relieve them of their obligation to subpoena" the non-party for the record. (Defs.' 11/2/18 Ltr.).⁴ Plaintiffs opposed this request. (Pls.' 11/7/18 Ltr.).⁵ The Court agreed with plaintiffs and Ordered the defendants to seek a

¹ Citations to "10/10/18 Order" refer to the Court's October 10, 2018 Order, ECF No. 82.

² Citations to "Defs.' 10/24/18 Ltr." refer to defendants' letter dated October 24, 2018, ECF No. 83.

³ Citations to "10/29/18 Order" refer to the Court's October 29, 2018 Order, ECF No. 84.

⁴ Citations to "Defs.' 11/2/18 Ltr." refer to defendants' letter dated November 2, 2018, ECF No. 85.

⁵ Citations to "Pls.' 11/7/18 Ltr." refer to plaintiffs' letter dated November 7, 2018, ECF No. 86.

subpoena to be So Ordered by the Court by November 26, 2018.


On November 21, 2018, defendants informed the Court that while “defendants previously advised the Court that the relevant portion of the physical file was last in possession of an individual who no longer works for ACS . . . an individual named Shirley Sealey,” in fact, Ms. Sealey is still employed by ACS. (Defs.’ 11/21/18 Ltr.).⁶ Defendants therefore state that “it would be inappropriate for the City to serve a subpoena on one of its current employees and instead can arrange for the deposition of Ms Sealey without a subpoena;” thus, they ask to be relieved of the obligation to seek a subpoena from this Court. (*Id.*) Plaintiffs oppose this request. (Pls.’ 11/21/18 Ltr.).⁷

Having reviewed the parties’ written submissions, the Court agrees that a subpoena for Ms. Sealey, a current ACS employee, is unnecessary at this time. The Court Orders the City to produce the entire ACS case file from its current employee Shirley Sealey by December 3, 2018, or to produce an affidavit from Ms. Sealey indicating that she has looked for and is unable to locate the file and that she does not know where it is. If the plaintiffs then wish to depose Ms. Sealey, they may do so, and the parties are directed to agree on a date for her deposition.

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
November 26, 2018



Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York

⁶ Citations to “Defs.’ 11/21/18 Ltr.” refer to defendants’ letter dated November 21, 2018, ECF No. 89.

⁷ Citations to “Pls.’ 11/21/18 Ltr.” refer to plaintiffs’ letter dated November 21, 2018, ECF No. 90.